

The Judiciary is Transformed into an Institutionalized Authority

2009 is a Golden Year for Palestinian Judiciary Achievements

The courts were able to dispose the number of the cases it received during 2009 in addition to one fourth of backlogged cases



Qadaona Newsletter



Legal Principles Derived from Cassation Court Decisions

"The Beneficiary in a Periodical Power of Attorney shall not be considered as an Owner if there were no Registration of the related Property at the Land Registration Department. The Beneficiary cannot also Transfer his/her Ownership to another Party as long as his/her Ownership is not confirmed through registration"

March 2010

12 Pages

(Issue no.4)

Judge Farid Al Jallad, the new Chief Justice in Palestine



Judge Farid Al-Jallad inaugurating the Judicial Media Center.

On December 2, 2009, Judge Farid Al Jallad took the oath of office before President Mahmoud Abbas as the Head of the Supreme Court, and the Head of the Supreme Judicial Council.

A presidential decree was issued on December 1st, 2009 appointing Judge Al Jallad as the Head of the Supreme Court,

the Head of the Supreme Judicial Council, replacing Judge Issa Abu Sharar who reached the legal age for retirement.

Judge Jallad is considered one of the most prominent legal professionals, where he served as Minister of Justice in the Palestinian National Authority, after which he served as the President's Legal

Advisor, and prior to that he was a practicing attorney for many years.

Judge Al Jallad began performing his duties at the Supreme Court. Judges from all court levels visited his Excellency in his office to congratulate him and expressed their support to the Judicial Administration and the new leadership.

The Palestinian Judiciary Scored Many Achievements but Much More is Still Ahead

Anyone following the local media, particularly during times of distress and crises can sense the degree of trust the Palestinian Judiciary enjoys as an independent and impartial authority that has played despite harsh conditions in the last years a very important role in protecting the rights and liberties of citizens and provided security and order to the society.

The efficiency which characterized the courts performance in disposition of disputes (whether between individuals or between various governmental agencies) has had a great effect on boosting public trust in the Judicial System through the increased number of court users and the commitment of official bodies in respecting and enforcing court judgments.

The great accomplishments achieved by the Judiciary does not mean the end of the road, rather it is the beginning of the path which all Judicial Authority institutions have to take. In this regard, execution of the Judicial Development Strategy objectives which is expected to be concluded by the end of 2010 must continue. The strategy envisions achieving legal stability and protecting basic citizen rights and liberties through granting of a fair and just trial and the independence of the judiciary in accordance with the vision of his Excellency the Chief Justice Farid Al Jallad through achieving the following objectives:

First: Organize and develop an integrative relationship with official and community based justice institutions.

There is no doubt that the Supreme Judicial Council plays a leading role in administering the judicial system and managing judiciary affairs, as well as building cooperative relations with other justice sector players, especially with the Public Prosecution, the Ministry of Justice, the Bar Association and the Police, due to the important role such institutions' play in supporting the Judiciary and in achieving justice. This can be achieved through the following steps:

Activating the role of the Supreme Judicial Council by guaranteeing the regularity of its meetings with the participation of all its members, especially the Attorney General and the Ministry of Justice represented by the Deputy Minister of Justice, which has an effect in enhancing the relationships between the Judicial Authority Institutions, the Public Prosecution and the Ministry of Justice and contributes to activating the role of the Judiciary and strengthening its independence.

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Media coverage of a court session.



A photo of the work proceedings at the Civil Enforcement Department of the Bethlehem Courthouse.

Written by Majed Al Arori

2009 was a golden year for Palestinian Judicial Authority achievements. The Judiciary has never witnessed such developments and achievements, whether in the area of case disposition by the courts or in the achievements that were accomplished by the various departments of the Supreme Judicial Council.

The courts effectively deal with case backlog

One of the most distinguished achievements of the courts was the number of the disposed cases during 2009, where (126,847) cases were disposed by First Instance and Conciliation Courts compared to only (75,876) cases during 2008. This means that the increase in the number of disposed cases was (50,971) cases, this also means that the courts' efficiency improved by (67%) compared to its efficiency during 2008.

The efficiency in court work and function is clear through the increase of the deposition rate compared to the number of newly registered cases during the same period. During 2008 the courts received a total of (111,595) newly registered cases; and was able to conclude (disposal) a total of (15,252) cases of the old cases (backlog) which reached according to the annual report of 2008 a total of (58,384) cases. This shows that since the year 2000 the courts were able to have a breakthrough in dealing with its old backlogged cases by 26% of the total case backlog. The Courts of Appeal were able to dispose (2440) cases that were registered during 2009 which reached a total of (2815) appellate cases.

The Supreme Court of Justice Doubles its Productivity

The efficiency and productivity was not limited to the First Instance and Conciliation Courts in the western districts but it also included the Supreme and the Cassation Courts, where the Supreme Court was able to conclude a total of (658) cases during 2009 compared to (310) cases during 2008, which is more than a double increase over the previous year. The number of newly registered cases before the court was (897) compared to only (477) during 2008. According to these numbers the productivity of the Supreme Court doubled during 2009.

In relation to the work of the Cassation Court, it was able to conclude a total of (594) cases out of the (678) cases it received during 2009, compared to a total of (418) cases out of (448) during the previous year.

Providing an Adequate Infrastructure for Litigation

The presence of suitable courthouses is a basic need for a good and healthy work

environment. Thus, the Supreme Judicial Council continued its efforts to provide the courts with adequate buildings and infrastructure during 2009, which witnessed the inauguration of the Jenin courthouse on March 19, 2009. The courthouse was built and fully furnished and equipped starting from the Court Clerks Offices and different departments, and ending with court rooms. On July 15 2009, the Bethlehem courthouse was also inaugurated and a 750 square meters on the second floor was added to the already existing building which doubled the court's size to 1400 square meters. The new second floor includes offices for the First Instance and Conciliation Court judges. On August 22, 2009 the offices of the Supreme and the Cassation Courts were moved to a new building composed of four floors and equipped with the needed court rooms, and a clerks office, as well as suitable offices for the Supreme Court judges. The various departments of the Supreme Judicial Council (the General Secretariat, Technical Office, Judicial Education, Planning and Projects Management and the Media and Public Relations) were also moved to a new location next to the Supreme Court and the Supreme Judicial Council building. The new location provides each department with the needed space and equipment to perform its duties and responsibilities.

Judicial Inspection

The Judicial Inspection Department worked towards enhancing judicial function and increasing its efficiency and achieving impartiality. The Department, which was developed during 2009 has an intense schedule for judicial inspection, and performed surprise inspections on many occasions which is considered more useful than regular inspections. Surprise inspections (not previously declared) of the courts enables the inspectors to visit the courts without having to inform the judge or the clerk or the court of the visit. This type of inspection was carried out in all First Instance, Conciliation and Appellate Courts with the aim of monitoring the execution of all the directions and requests which were given to the courts by the inspectors during their previous visits and also to make sure that the judges and the court clerks adhere to the applicable legal rules related to their work and ultimately better serve the public. The inspectors might conduct more than one surprise visit to the same court during the same month. The Inspection Department also conducted many regularly scheduled inspection visits to all First Instance, Conciliation and Appellate Courts. Such visits were conducted according to a prepared schedule, and with written

notification to the judge or clerk or the court prior to the visit. Such visits aim at monitoring the level of adherence the judges and court clerks have in relation to the working hours, the time the hearing sessions start in the court, how the trials are being conducted in addition to the level of seriousness the judges show towards their duties and how they exert their control of the hearing sessions and the trial proceedings and how they treat their colleagues, staff members, plaintiffs, and attorneys. The visits also aim at assessing the judges' professional capacities, their leadership skills and their ability to deal with arguments and requests that might appear during the trial, in addition to how they draft their judgments and decisions, its reasoning and conformation with the lingual and legal rules. Other aspects of the judges' work which also come under inspection is the number of cases each judge tries and concludes and how they spend their time after and before the hearing sessions and their personal conduct in addition to evaluating the degree of self-confidence they have.

The Inspection Department conducted (72) regular inspection visits i.e. an average of two weekly visits. According to orders directed to the Department by the Head of the Supreme Judicial Council, the Inspection Department investigated (15) cases and submitted investigation results to His Excellency in order for him and the Council to take appropriate measures. In relation to complaints, during 2009 the Department received (95) different complaints, where (20) were against judges and (29) were related to the prolonged trial proceedings and (29) were against the procedures taken by the notary publics, enforcement judges, court clerks, and other complaints. All these complaints were investigated and processed according to the applicable legal rules, where (76) of which were concluded by taking the appropriate measures and decisions and the results were submitted to the Head of the Supreme Judicial Council in order to take appropriate measures.

Deriving Legal Principles

During 2009 the Technical Office was able to perform many activities and accomplished and achievements, the most important of which is deriving legal principles from the judgments issued by the Supreme Court in both the West Bank and Gaza in the civil, commercial, and administrative areas of law. The Office was able to publish the legal principles which it derived from judgments in book forms. Legal principles issued by the Supreme Court for years 2002, 2003, 2004, and legal principles issued by the Cassation Court (in criminal cases)

during the period 2002, 2003, 2004, Legal Principles issued by the Palestinian Cassation Court (In Civil Cases) during 2002 and 2003, Legal Principles issued by the Palestinian Cassation Court (in civil cases) during 2004. Work was also completed in deriving the legal principles issued by the Supreme Court during 2005 and afterwards in order to publish them. The Office aims at producing a periodical newsletter (circular) which shall contain such legal principles.

The Technical Office was also able and in cooperation with the IT Department and the Public Relations and Media Department to publish all judicial judgments on the Supreme Judicial Council's website, which enables all judges to obtain any judgment they need by accessing this website. The judgments are being updated on regular basis.

The Planning Unit Participates in the Development of the Justice Sector Strategy

During 2009, the Planning and Project Management Unit started to participate in the development of the Justice Sector Mid-term Strategy for the years 2011-2013; it also prepared for the Supreme Judicial Council's Mid-term Strategic Plan for the years 2011-2013, in addition to the development of many work plans and programs to implement the Judiciary's development plans. The Unit also supervised the execution of such programs to make sure that all target groups will benefit from the funding provided by donor agencies and that all projects and programs do achieve their intended goals and objectives and that there is no overlap between the different projects.

In order to enable the Judiciary and improve its services and uplift its efficiency the Judiciary was able to obtain the donor community's approval to support the Planning Unit for an additional two years. During these two years the Unit will be supporting the needed staff members who will be appointed by the Council and will be trained by current staff who are appointed by the various donor agencies. The Unit also participated in the committee which reviewed the activities of the Supreme Judicial Council's 2010 strategic plan. It also helps the other Council departments and units in the development of their internal work plans.

As a result of numerous meetings with the donors, the Unit provided and is still providing the Council with developmental needs. In cooperation with the Ministry of Planning the Unit signed an agreement with the Swedish Government in order to provide the Council with its urgent needs. Through this project the Council was able to fund the printing of the Supreme Court judgments and the transfer of the Nablus Court electricity generator.

The Unit works in coordination with the IT Department in order to achieve the automation of all courts and the electronic management of the court files. In this regard the Unit follows up with the IT Department work related to the development of the second version of the Mizan case management system in addition to providing the Council and its departments and units with equipment and tools needed for the automation.

In order to create an appropriate litigation environment, the Unit supervises the construction project of (Ramallah, Hebron, and Tulkarem new courthouses) with the Canadian International Development Agency (CIDA). Environment impact studies for all three locations have been prepared. Land lots were also allocated in order to build conciliation courts in both Salfit and Tubas.

Establishing the Court Administration Department

In accordance with the Supreme Judicial Council's efforts to institutionalize its functions and responsibilities, a new Court Administration Department was established during 2009, as one of the Judicial Authority Departments, where an organizational structure and job description for its internal units in addition to its internal by law were developed in accordance with the organizational structure of the Council as well as setting the 2009 work plan for the Department.

The Court Administration Department focused during 2009 on the development and upgrading of the Enforcement Departments by archiving its files and completing the automation process, where all the enforcement files were re-classified. The Department also worked on entering the data related to thousands of the Enforcement Departments files into an automated database and revised the previously automated data of the Mizan program by correcting and updating cases status. The archiving process included Jenin, Ramallah, Hebron, Nablus, Bethlehem, Jericho, Tubas and Qalqilya courts. Renovation of some Civil Judgment Departments was also carried out.

The Department also continued the automation of the Notary Public Departments in addition to the development and upgrading of its infrastructure especially in Nablus, Jenin, Tubas, Jericho, Hebron, Bethlehem and Qalqilya courts. The aim of such development is to create an electronic archive in addition to the existing paper based system.

The Court Administration Department continued the automation of Notary Public Departments through developing an automated program in order to manage the notification process. This new program was implemented in Nablus, Jenin and Ramallah courts. In addition to the automation efforts the Notification Departments were also provided with a number of interns to serve in the departments due to the lack of staff members in these departments. The interns were used in order to enter all the notification process data into a central database.

The Department also worked on the unification of the procedures followed before the various court departments and published a User's Guide for each court department, as well as unifying all administrative and executive procedures used by the various Clerk Offices in the courts through the publication of a practice guide that demonstrates how to register a new case before the court. Unification of procedures followed by the Notary Public Departments and a User's Guide was also published in this regard.

Before the establishment of the Quality Control Department a group of staff members were seconded by the Council to carry out the function of this department. The Council also worked with the Financial and Administrative Affairs Department to develop the operational procedures for this department in addition to conducting an inventory to determine the financial assets of the Civil Judgment Departments. After

four levels of auditing which were done at the Nablus, Jenin, and Ramallah Civil Judgment Departments, it was found that the amount of cash which exists exceeds the actual amount of citizen payments; the surplus amount that was found to reach \$643,400. The Department also played an active role in the training of the administrative staff in order to raise their efficiency.

Judicial Training

2009 was full of training activities which included various areas and fields and were conducted through the Judicial Training Department. The continuing judicial training program for both Conciliation and First Instance Court judges include a variety of important training subjects which are related to core judicial functions.

The first training activity that was held by the Judicial Training Department on February 14, 2009 and attended by all West Bank Conciliation, First Instance, and Appellate Courts. The total number of participants reached (119) judges, followed by a training on Judicial Inspection which was held on March 28, 2009 and targeted all West Bank judges. Another training on referrals in the civil and commercial procedures law was conducted on March 28, 2009, with participation of (106) judges, while a total of (80) Conciliation and First Instance Court judges attended a training program on the "Early Judicial Control the Trial Process."

Within the same continuing judicial training program many other workshops were held, among of which is a two-day workshop (24-25/4/2009) on "Evidence" attended by Conciliation and First Instance Court judges. Another workshop was held on November 7, 2009 in Nablus, which dealt with "Insurance" and was attended by (40) judges from the northern district Conciliation Courts. The same workshop was held on November 14, 2009 in Bethlehem and was attended by (30) Conciliation judges from the central and southern districts.

Within the context of the Basic Training Program which targets newly appointed Conciliation Court judges, a four-month training program (13/4 -18/7/2009) was held at the Palestinian Judicial Institute and was attended by (11) newly appointed Conciliation Court judges. This program usually includes a number of theoretical training topics in addition to a moot court and mentoring program.

Regarding specialized training workshops, the Judicial Training Department held a training workshop on April 11, 2009, on "requests" and was attended by (37) Conciliation and First Instance Court judges who were selected by the Judicial Training Committee. Another specialized workshop on the "Enforcement Law" was held on April 18, 2009 and was attended by (48) enforcement officers.

During 2009 four workshops each for three-days were held on "Criminal Case Proceedings" targeting all West Bank Conciliation and First Instance Court judges. The first workshop was held on 6-8/3/2009, the second on 3-5/4/2009, the third on 8-10/5/2009 and the fourth on 20-22/7/2009.

Within the Continuing Compulsory Training Program plan, five judges who were carefully selected were sent to the Jordanian Judicial Institute for two weeks (14-27/6/2009).

A two-day training workshop on the "Civil and Criminal Judgments Drafting Skills" was held and attended by the newly appointed Conciliation Court judges. This training followed their basic four-month training program at the Palestinian Judicial Institute. A decision to conduct such workshops was taken after the results of a test the judges took showed that they need such training.

In the area of human rights, a training program was held with support from the High Commissioner Office for Human Rights. The four-day training program was held in Amman, Jordan (29/10-1/11/2009) and attended by (15) Conciliation judges.



A photo of the inauguration of the Jenin compound of courthouses.

In order to strengthen the judges English language skills a training program was held and attended by (72) judges and a limited number of court administrative staff.

The newly appointed 11 Conciliation Court judges attended a two-week training program at the Jordanian Judicial Institute from (16-30/10/2009). The training program focused on practical training.

Second: Court Administrative Staff Training Programs

The training topics of this plan were designed based on a training needs assessment that included court clerks in addition to the clerks of the Notary Public and Civil Judgment Departments. The training program aims at strengthening the capacities of the court clerks to provide better legal and judicial services.

The Judicial Training Department held a one day training event on the use of the automated case management software (Mizan) on March 7, 2009 which was attended by all chief clerks and their deputies. The training was conducted by the Supreme Judicial Council's IT Department. Another training workshop was held on March 21, 2009 concerning the unification of the archiving procedures in the Court Clerk Offices in addition to another one-day workshop on communications skills and how to deal with the public. A third training workshop concerning the unification of the procedures governing the proceedings of criminal and civil cases was held on May 23, 2009.

Due to the large number of court employees, which reached (146) staff members, they were divided into groups according to their place of residence to achieve the maximum benefit from the training activities. For each training topic, three workshops were held in order to cover the entire West Bank staff. The first set of workshops started on March 28, 2009 at the Bethlehem and Dura courts and in the Nablus Court for Jenin and Tubas court staff, and in the Palestinian Judicial Training Institute for Supreme and Cassation Court staff and Jericho Court staff. The second set of workshops were held on April 4th, 2009 for Tulkarem and Qalqilya Court staff, and the third set of workshops were held on April 11th 2009 in the Nablus First Instance court for the court staff, and in the Hebron Court for Hebron and Halhool court staff, and finally at the Palestinian Judicial

Institute for Ramallah Conciliation and First Instance Court staff.

The training program included a presentation on the importance of effective and accurate use of Mizan case management system in order to facilitate the automation of the notification process including the keeping and retrieval of information in an easy manner. This training was conducted by the Supreme Judicial Council's IT Department.

In relation to communication skills and customer service techniques and unification of the archiving procedures followed in the court clerks' offices, the workshops were held with the same arrangements on April 25, May 9, and May 16, 2009.

The same arrangements were also followed for the unification of the civil and criminal case proceedings training in both the Conciliation and First Instance Courts Clerk offices on May 30, and June 6, 2009; a training for Tulkarem and Qalqilya courts was also held on June 20, 2009 in the Jenin First Instance court for Jenin and Tubas court staff.

Other training workshops were also held targeting enforcement officers on the importance of using the Mizan case management system, which would eventually facilitate the use of the notification automated system. As for communications and customer service skills, training was held at the Palestinian Judicial Institute on June 27, 2009 and was attended by (31) enforcement officers. The (31) enforcement officers also participated in training related to the unification of the procedures followed by the Civil Judgment Departments which included a training on the use of the new financial system.

The court staff training program also included training sessions directed towards the notary public officers (26) from throughout the West Bank courts who participated in the training workshop held at the Palestinian Judicial Institute.

As to the West Bank, 92 processors were divided into two groups, where each group attended a two-day training workshop on the notification law. This training was also held for (47) processors, chief clerks, and notary public officers on July 20, 2009.

Court Automation

During 2009 the IT Department continued its efforts in the area of court automation. It worked with courts staff to verify manual and automated data through the Mizan

In 2009 the courts disposed 126847 cases of the different cases reviewed by the Conciliation and First Instance courts, whereas in 2008 the cases disposed amounted to 75876, meaning an increase of 50971 cases, and an improvement of 67% in performance compared to 2008



The Second Judicial Annual Conference in Bethlehem.

program. It also provided the courts with 244 computers which were prepared with the needed programs in order to serve the courts and its various departments. This activity was carried out in cooperation with the Supreme Judicial Council's Planning Unit.

The Department was also able to develop an automated program for the use of the Technical Office, in addition to an interface which enables the judges to search Supreme Court judgments. Another program was also developed for the use of the Financial and Supplies Department, which can easily deal with supply requests. The Department provided supervisors with the ability to monitor their staff's adherence to the official working hours on daily or on a needs basis by logging into a special online program.

The IT Department followed up on the IT infrastructure preparations for the Jenin new courthouse and the new floor at Qalqilya First Instance Court in addition to the new offices of the Supreme Court and the Supreme Judicial Council and the new floor at Bethlehem First Instance Court.

In relation to the second version of (Mizan) software, a unified software that gathers all the courts databases in one central

database was developed. This central database makes it easy to obtain various statistical reports and also to avoid the technical problems of the program's first version.

The newly developed central database can also be connected to the prosecution's database/s, the Ministry of Interior and the Ministry of Transportation. At the end of 2009 a first copy of (Mizan V2) was developed. This copy is on trial and is being tested by Ramallah court staff.

Judicial Media

The Media and Public Relations Department began its work at the end of 2008. The Department faced many challenges and obstacles and was able to overcome them due to the professional management and dedicated work in addition to the logistical and moral support of the Supreme Judicial Council and the clear desire of the Department's staff to achieve success. For all the before mentioned reasons, the Department was able to accomplish many achievements which it considers as a mere start and a strong basis in order to achieve all the goals and objectives and raise the Palestinian public's trust in their Judicial System.

First: Numbers and facts related to the number of published media reports

During 2009 the Media and Public Relations Department continued to publish courts and Judiciary news and to encourage reporters and journalists to cover the Judiciary. The Department was able to count a large number of media pieces related to the courts and the Judiciary. This coverage was categorized according to the publishing media outlet and the nature of the report. There were (80) written reports which were published on the Supreme Judicial Council's website and a total of (68) reports were published by Al Quds Newspaper in addition to (60) reports by Al-Ayyam Newspaper and (58) by Al Hayat Al- Jadedah Newspaper. There were also (81) reports by Maan News Agency, and (30) reports by Wafa National News Agency. As to the TV reports, there were (20) TV reports that were broadcasted by different TV stations, and (41) radio reports, in addition to tens of reports that were broadcasted by other news agencies such as PNN, Al Jazeera net, PBC, Amad Press, Arab Today and Elaph. It is worth mentioning that the AMIN Media Network website (which is the most used media website by Palestinian Journalists) dedicated a special section on its main page for Judiciary news. Until today a total of (73) written reports related to the Judiciary were published on this website in addition to (30) radio reports and (9) TV reports.

Second: The achievements of the Media and Public Relations Department according to the objectives stated in its strategic plan

The first step which the Department took is the development of a work plan for the year 2009. The work plan defined goals and objectives. The first goal was to educate the public about the procedures and an initiative adopted by the Supreme Judicial Council in addition to provide information

and facilitate the access to such information in order to rebuild public trust in the Judiciary.

In order to achieve such goals the Department drafted all the Council President speeches. It also worked hard in order to upgrade the Council's website and transformed it into a news agency that specializes in judicial affairs. It also managed to produce and publish three issues of the Judiciary quarterly newsletter Qada'ona.

The second goal stated in the annual work plan was to enhance the relations between the Supreme Judicial Council and the media in addition to enhance the media's ability to cover judicial affairs for the benefit of the public interest. The Department organized press conferences in Jenin on February 26, 2009 and in Bethlehem on July 21, 2009. Journalists were also invited to tour the premises of both the Jenin and Nablus courts.

As to the third goal which is the development of the relations between the Supreme Judicial Council and the Civil Society Organizations, the Council released on November 26, 2009 a draft Memorandum of Understanding for discussion between the council and the civil society organizations which deal with legal and judicial issues.. On December 15, the memo was signed between the Council and all the participating organizations.

Finally, the Department was also responsible for the publication of a number of publications such as the Qada'ona quarterly newsletter and the Judicial Authority 2008 Annual Report, and the Perception Survey on the Status of the Judiciary. All these publications were published in both Arabic and English. It also produced a short documentary which documents the main achievements of the Judicial Authority.

The Supreme Judicial Council Inaugurates the Judicial Media Center

Judge Farid Al Jallad, Head of the Supreme Court, Head of the Supreme Judicial Council assured that the message of the press is in no way less important than the message of the Judiciary. He also added that there is interest by the Palestinian public to have access to the Judiciary so citizens can feel secure through the dissemination of the culture of justice.

The Chief Justice's words came during the inauguration of the Judicial Media Center at the headquarters of the Supreme Judicial Council which took place on December 27, 2009 and is considered to be part of the Public Relations and Media Department. The Center was established through support by the USAID-funded Netham Rule of Law Project. The opening ceremony was attended by in addition to the Chief Justice, Dr. Howard Sumka, USAID Mission Director, and Mr. Majed Al Arori, Head of the Media and Public Relations Department in addition to a number of Palestinian judges and journalists representing various news agencies.

The Chief Justice expressed his hope that the Judicial Media Center will contribute to strengthening relationships between citizens and Palestinian Institutions within the legal framework stated in the Publications Law. Judge Al Jallad also noted that he hoped that the achievement of rule of law which is the aim of Palestinians and their Judiciary will go side by side with achieving a sovereign and independent Palestinian

state. At the end of his address, he commended the efforts made by the Netham Project in supporting the Palestinian Judiciary under the leadership of Mr. Nabil Isifan, the project's Chief of Party and wished success for all Supreme Judicial Council Departments and Units. The Chief Justice also thanked the United States Agency for International Development and its Mission Director Dr. Howard Sumka and hoped for continued cooperation in the future.

In his speech Dr. Sumka expressed his pleasure in celebrating the opening of the Media Center with the Chief Justice and the Palestinian Judiciary and affirmed that all free societies depend on the role the media plays in reporting on the work of the state. He also noted that the Media Center is an asset for journalists and the media in carrying out their job in covering the Judiciary and the courts. The Mission Director also expressed his content for the achievements on the ground in terms of quality and quantity of work during the past months, and noted USAID's contributions towards supporting the judicial media by the establishment of the Media and Public Relations Department through the Netham Project which provided the Department with needed equipment and staff training and building the capacity of Media in cooperation with the AMIN News Network. Dr. Sumka expressed his hope that capacity building for journalists will enable them to cover the Judiciary and courts news. At the end of his speech he asserted that USAID is proud to build the capacity of the Supreme



A photo of the inauguration of the Judicial Media Center.

Judicial Council in all areas, and is pleased to continue to provide such support. He also reaffirmed words of the Chief Justice that a strong and effective Judiciary will certainly play a great role in building the state the Palestinians are looking for.

Mr. Majed Al Arori – the Head of the Judicial Media Center, Head of the Public Relations and Media Department- said that the road was not easy when the Media Department started its work fourteen months ago, due to the fact that there was no culture of judicial media and press. He also pointed out that enhancing judiciary independence is an integral part of the role of the media.

Mr. Al Arori noted that one of the strategic objectives of the Media Department was to establish a Judicial Media Center to facili-

tate the media work according to professional basis, and expressed his pleasure to achieve this goal, and hoped that work will continue according to a code of ethics that governs the judicial media and its relations with the Judiciary due to the fact that applicable law does not regulate all the details related to Judicial media. Arori said that there are certain details that should be clarified and agreed upon with journalists in order to contribute towards more effective judicial media coverage.

At the end of the press conference a number of journalists directed questions to the Chief Justice and the USAID Mission Director concerning the future relations between the Judicial Authority and the media.

Legal Principles Derived from Cassation Court Decisions

"The Beneficiary in a Periodical Power of Attorney shall not be considered as an Owner if there were no Registration of the related Property at the Land Registration Department. The Beneficiary cannot also Transfer his/her Ownership to another Party as long as his/her Ownership is not confirmed through registration"

Under Supervision of Judge Imad Salim – Supreme Court Judge

Derived Principles

- Article (2) of the Actions Concerning Immovable Properties Law number (49) of 1953, and article (16/3) of the Land and Water Settlement Law number (40) of 1952, orders that all the transactions (sale, barter, division, etc.) related to land or waters to be carried out through the Land Registration Department.
- Periodical Power of Attorney documents organized according to article (11/b) of the Law amending the Provisions Related to the Immovable Properties of 1952 states that the sale of all immovable property which have a third party's right attached to it shall be executed before the Land Registration Departments within fifteen years from the date such periodical power of attorney was organized.
- The beneficiary in a periodical power of attorney shall not be considered as an owner of the related immovable property unless such transaction is registered at the Land Registration Department. He/she cannot also transfer his/her rights over the property to another party as long as his/her ownership was not confirmed through registration at the Land Registration Department. Any power of attorney which is related to the same property given by him/her to a third party appointing him/her as his/her agent shall not have any legal effect.
- The difference between the seller who gave the other a right over the property through a periodical power of attorney and this beneficiary in such power of attorney is that he first is a confirmed owner of the property and the second is not an owner and thus cannot give any rights to a third party unless the property which is the subject of the periodical power of attorney is registered before the Land Registration Department.
- Testimonies related to the Waqf – Endowments - before the Shari'a Courts, shall not make such endowment obligatory unless it is registered before the Land Registration Department. The reason for such a rule is that the legislator requires that all transactions related to immovable properties to be carried out through the Land Registration Department, thus the registration of the endowment under the name of the heirs according to an inheritance transmission transaction before the registration of the endowment at the Land Registration Department would not affect the rights of the heirs in relation to the endowment.

Civil Cassation

Number 162/2005 - Date 18/9/2006

The Judgment

Issued by the Cassation Court held in Ramallah which is entitled to conduct the trial and issue the judgment in the name of the Arab Palestinian people.

Presiding Panel: Headed by Judge Abdullah Ghuzlan in addition to Judge Musleh, Judge Iman Naser Eddin, Judge Othamni Al Takrori, and Judge Fathi Abu Saror as members of the panel.

Plaintiffs: 1) The Ministry of Endowments and Religious Affairs.

2) Mohammad Mahmoud Rashed Jaradneh / Nablus

Presented by: Attorney Abdullah Hussni Atallah / Nablus.

Defendant: Khalil (Adel) Ahmed Khalil Aljad

Presented by: Attorney Jamal Hussein Jaber / Nablus .

The Procedures

The two plaintiffs submitted this objection through their attorney on May 18, 2005 requesting the court to overturn the judgment issued by Nablus First Instance Court on April 20, 2005 in its appellate capacity in case number (80/2003) Civil Appeals – which nullified the appealed judgment and the dismissal of the civil case number (1128/2001) brought before the Nablus Conciliation Court.

The reasons of the objection is that the judgment issued by the Nablus First Instance Court in its appellate capacity contradicted with the law when it stated that an endowment can be established only by its registration before the Land Registration Department. The judgment of the court also contradicted the law when it ruled that the periodical power of attorney does not constitute an ownership transferring contract but rather a mere preparatory action in order to complete the transfer of ownership. The objection requests the overturn of the objected to judgment and also requests the court to take the necessary legal action.

The objected to party submitted before the court a list of responses through his attorney which stated that the objection to the judgment does confirm with the law and the objection reasons cannot discredit it or challenge its legality asking the court to dismiss the objection and order both objectors to pay the fees, costs, and attorney fees.

The Trial

After reviewing the papers and documents submitted and deliberations among the court panel and due to the fact that the objection submitted fulfills all the formality requirements the court decided to accept the review of the objection's subject matter.

Where the facts of the case indicate that the second objector brought a legal action (lawsuit) against the objected to party and others in order to nullify the registration and enforcement of the periodic power of attorney; the first objector was made to join the case as a plaintiff.

The late (Fatimah Ismael Ahmed Al Jad) owned 17 shares out of 24 shares which constitute the total shares in the land lot number (89) Basin number (24055) in Blaybos which is a neighborhood in Nablus.



On the 25th of December 1988, the late Fatimah organized a power of attorney number 1261/88/288 before the Nablus Notary Public, through which she sold all of her shares in the above mentioned land lot to (Ibrahim Mahmoud Ahmad Al Jad.

On the 13th of May 1989 the late Fatimah gave for charity (made an endowment- ten shares of her shares in the above mentioned land lot). The endowment was registered before the Nablus Shari'a Court under Endowment Certificate number 272/63/25.

On the 18th of May 1991 Ibrahim Mahmoud Ahmad Al Jad, the beneficiary according to the periodic power of attorney number 1261/88/288 sold all the shares he bought from late Fatimah to the second objector the plaintiff according to power of attorney number 699/91/300.

On the 4th of April 1990, the Fatimah died and accordingly an inheritance transaction was organized and her shares in the above mentioned land lot were distributed to her heirs according to real state transaction number (5688/12).

As a result to the trial that was conducted before the first level court, the court issued its judgment nullifying the real estate transaction number (5688/12) registered before the Nablus Land Registration Department. The court also ordered the registration of the late Fatimah's shares according to the following: (10) shares under the name of the first objector and (7) shares under the name of the other plaintiff (the second objector) and the nullification of the inheritance transfer transaction.

Civil Cassation

The (Objected to) party did not accept the courts' judgment against him and appealed it before the Nablus First Instance Court in its appellate capacity which issued its judgment (the subject of this objection before the Cassation Court) which nullified the appealed judgment and rejected the case.

The two objectors did not agree with the appealed judgment and objected to it before the Cassation Court for the reasons previously stated.

The First Instance Court in its appellate capacity revoked the judgment issued by the Conciliation Court based on the notion that the periodical power of attorney should not be considered an ownership certificate which can replace the registration certificate and the buyer who buys based on a periodic power of attorney has no right to sell or give away or mortgage or take any action related to the property or any similar action he/she might take would be an considered as if it was done by a person who does not own the property. The court also added that the establishment of an endowment can only be conducted when it is registered before the Land Registration Department.

By applying the law on the objected to judgment we should first explain that the Legislator according to the text of Article (2) of the Actions related to Immovable Property Number (49) of 1953 and Article (16/3) of the Land and Water Settlement Law Number (40) of 1952, restricted all actions such as sale or barter or division, etc. related to immovable property to be conducted through the Land Registration Department. Article (11/b) of the Law Amending the Provisions related to Immovable Property Number (51) of 1958, which states that all periodic power of attorneys which are related to immovable properties should be registered at the Land Registration Department within fifteen years from the date the power of attorney was drafted. The beneficiary in such power of attorneys should not be considered an owner of the property unless the power of attorney is registered in the Land Registration Department. Thus the beneficiary cannot transfer to a third party any rights related to the property as long as his/her ownership is tied to the registration of the power of attorney. This means that any power of attorney given by such person to a third party should not have any legal effect. The beneficiary in the periodical power of attorney is not an owner according to the applicable legal rules and thus cannot give any rights to a third party over the property. Accordingly we find that the objector has no legal interest in the appeal which means that the Legislator does not provide any protection to the objector's claim.

As to the establishment of the endowment and as long as the Legislator orders that the transactions related to immovable property should go through the Land Registration Department, thus the registration of the land in the names of the heirs after the death of late Fatimah according to the inheritance transfer transactions and before the registration of the endowment at the Land Registration Department should not affect the legality of the inheritance transfer because the establishment of the endowment before the Shari'a Court does not make the endowment legally binding unless it is registered at the Land Registration Department.

Due to the above mentioned reasons, the First Instance Court judgment which overturned the Conciliation Court judgment was a correct judgment and was issued according to the applicable law, thus the claims of the objectors before this court has no basis in law and the objection should be dismissed.

The Court decides to dismiss the objection and order the objectors to pay all fees and costs in addition to one hundred Dinars as attorney fees.

Judgment issued in the name of the Arab Palestinian people on September 18th, 2006.

Providing the Judicial Police with Fifty Additional Cops

Search Continues for Mechanisms to would allow Payment of Traffic Violations through Commercial Banks

In light of efforts to enhance the cooperation between the Palestinian Police and the Supreme Judicial Council, Chief Justice Farid Al Jallad met on December 20, 2009 at the Supreme Judicial Council offices with General Hazem Attalah the Director General of the Palestinian Police and discussed a number of issues of mutual interest including the Judicial Authority structure and the structure of the Judicial Police in addition to how to deal with traffic violations.

During the meeting an evaluation of Judicial Police achievements was made as well as a discussion of the impediments that prevent the activation of the Judicial Police's role on the ground. General Attalah explained that the main problem facing the activation of the Judicial Police is the lack of personnel and the issue of headquarters that would host such force. The establishment of an active Judicial Police Force requires the enlistment of seven hundred new police officers, in addition to providing the needed headquarters for such force.

As a response to His Excellency's the Chief Justice call to move forward in the establishment of the Judicial Police and

to accomplish tangible steps in this regard, the Police Director General decided to support the Judicial Police with additional fifty officers which raises the total number of the force to seventy five who constitute the nucleus of the Judicial Police Force. He also expressed his hope to be able to recruit additional police officers in the coming year.

The Chief Justice noted that the Council is willing to provide the Judicial Police personnel with a training program through the Judicial Training Institute which would include the training of trainers from among the police force who can later provide the needed training to the rest of the Judicial Police personnel.

In regards to the traffic violations, the two sides agreed on continuing the efforts needed to enable the public to pay traffic fines at commercial banks and post offices without having to go to the courts to settle such matters-- particularly for citizens who don't intend to contest the fine. Both sides agreed to continue taking steps and procedures needed to achieve this matter. During the meeting other issues were also discussed such as the establishment of a Police Court and the enforcement of



Judge Farid Al-Jallad in meeting with a delegation of the Palestinian Police.

judicial judgments and decisions, where the Chief Justice asked to be provided by the police with a full proposal concerning the establishment of the Police Court in addition to its jurisdiction provided that such jurisdiction does not contradict with the regular Judiciary's powers. In relation to enforcing court judgments, the Police Director General said that the police does its best and was able to achieve great results in the execution of judicial notifications despite the fact that 47% of these notifications are related to persons who

reside in areas (A) or (B) areas or behind the wall.

The meeting was also attended by Judge Sami Sarsour, the Deputy Chief Justice; Judge Ezzat Al Ramini, Head of the Court Administration Department; Mr. Majed Al Arori, Head of the Media and Public Relations Department, in addition to Major General Jihad Al Maseemi, Deputy Director General of the Police Force; and Lieutenant Colonel Eyad Shtayeh, the Head of the Judicial Police.

The Supreme Judicial Council Participates in Course On Activating Fair Trials and Court Management in South Korea

The Palestinian Supreme Judicial Council participated in a course on "Activating Fair Trials and Court Management" which was held in Seoul, the South Korean capital from October 13-November 28, 2009. The Supreme Judicial Council was represented by Judge Raed Abdul Hameed, Head of the Judicial Training Department, and Judge Nida' Jarrar, Nablus Conciliation Court Judge, with participation of ten countries including Palestine, Jordan, and Egypt.

Judge Abdul Hameed stated that the participation of the Supreme Judicial Council in the course was distinguished given the quality of material they presented, which included an introduction to the Palestinian Judicial system and the most significant developments

and achievements made by the Judicial Authority. Abdul Hameed added that the importance of participating in this course was getting acquainted with the Judicial system in Korea which is quite advanced and growing through observations made in courts and visits to the Supreme Court in Seoul, the Courts of Appeal and First Instance in Busan, in addition to addressing the issue of the modality of managing departments as well as administrative work through discussing different topics related to Judicial training, strategic planning, court management and information technology.

Abdul Hameed stressed that both Judicial Authorities in Palestine and South Korea are working to strengthen cooperation between them.

Newly Appointed Conciliation Court Judges Attend Practical Training Programs at the Jordanian Conciliation Courts

The Supreme Judicial Council in coordination with the Jordanian Judicial Institute organized a two-week training program (November 17-29, 2009), that included practical training at the Jordanian Conciliation Courts for eleven newly appointed Conciliation Court judges that were appointed according to a Presidential Decree issued on March 26, 2009 according to a nomination by the Supreme Judicial Council.

The first week of the program included a visit to the National Forensic Medicine

Center, where trainees attended a series of lectures conducted by the Center's Director and also attended hearing sessions at the Conciliation Courts which covered numerous topics such as property division cases, tenant and land lord dispute, as well as labor cases. During the second week the judges visited the Public Security Criminal Labs, where they attended lectures on the use of criminal evidence and the management of criminal labs. They also attended criminal hearing sessions in both Conciliation Courts and the Grand Felonies Court.



The Chief Justice during the opening of the program.

The Supreme Judicial Council Inaugurates the Third Phase of the Administrative Staff Training Plan

His Excellency Judge Farid Al Jallad, Head of the Supreme Court, Head of the Supreme Judicial Council inaugurated on November, 12 2009 the third phase of the administrative staff training program which is implemented in cooperation with the USAID-funded Netham Project. The training activities began with a workshop for court notifiers in all West Bank courts on communications skills and how to deal with the public.

During the opening ceremony, His Excellency affirmed that the Supreme Judicial Council supports such training programs that enhance skills and abil-

ity of court staff. Mr. Nabil Isifan, Netham's Chief of Party praised the developments related court notifiers where their number increased to 90 staff members while they were only 20 a few years ago. He added that these developments will include the provision of a uniform to notifiers in addition to motorcycles, which will be provided by the Supreme Judicial Council in order to facilitate their work.

These trainings target all court staff including chief clerks, enforcement officers, notary public, and notification departments. The training was delivered by administrative and training experts.

Judges and Lawyers



By: Judge Mazin Sesalim
Supreme Court Judge

The relationship between the judiciary and the legal profession is strong, due to the fact that both carry a Semitic message, thus both judges and lawyers complement each other's work.

The message of the Judiciary is to establish justice among people, which is a sacred mission driven from the fact that the Judiciary represents society in giving each person his/her right and in protecting the poor and providing justice to the weak which is the main function of the state. "O David! Lo! We have set thee as a viceroy in the earth; therefore judge aright between mankind." Likewise the Holy Quran states: "if you rule, rule with justice."

These two verses of the Holy Quran show the importance and sacredness of the message the judges convey. What is greater than a just and fair judiciary which provides people with a true sense of security and can rest assure that their lives, rights, liberties, and property is protected from any unlawful act.

Since the establishment of the Judiciary in civilized societies, the legal profession was established to represent people before the courts because a judge cannot rule on the disputes presented before him and issue a just and fair judgment without the presence of lawyers who can help him/her to understand and see the various elements of the dispute by searching and researching and preparing the elements that constitute the case whether such elements are related to the facts of the dispute or to the applicable law. The lawyers prepare and present the supporting evidence and explain its implications and effect on the dispute to the court. This is also what the defendant's lawyer does while defending his/her client. Thus when the views and positions of the two parties are presented to the court by their lawyers, it is easy for the judge to know and understand the dispute's facts, thus he/she can issue a judgment which is just and fair to both parties.

The legal profession assists the judiciary to reach a just ruling and both the lawyers and the judges participate in achieving justice to society, bearing in mind that justice is the main corner stone of humanity and as has always been said "Justice is the base of governance."

Because of the above mentioned reasons, cooperation was established between the judges and lawyers, this cooperation and spiritual tie is very evident in the role switching between the two sides, where a lawyer can leave his/her private practice and apply to become a judge and a judge after he/she leaves their judicial post can choose to become a practicing lawyer. Neither one feels that they are a stranger when starting the new practice because they are members of the same family which

works to achieve one goal-- the establishment of justice and service of law. This is also evident in the similarities and closeness between the judiciary and the legal profession, where whenever there are developments in the judiciary the effects can be felt in the legal profession and vice versa in addition you would not be able to find any differences between the level of the Judiciary and level of the legal profession.

If you want to really know the degree of relation between the Judiciary and the legal profession, try to imagine a Judiciary without lawyers or lawyers without the judiciary. Such thinking will assure you that the judiciary cannot convey its message without the legal profession, while the legal profession will become useless if it could not convey its message before the judiciary, or if there was no one to judge disputes in a just manner.

Due to the above, legislation requires that the anyone who has a disputed has the right to retain the services of a lawyer and it also made it mandatory to have a lawyer to defend a person who is charged with committing a felony and if such person/s could not retain the services of a lawyer then the court has to appoint one for them and in many instances actions or procedures of the court become null and void in the absence of the lawyer.

The judiciary and the defense are so related that no one can function without the other and they are both partners in the establishment of justice and also partners in work and duties in addition to the legal culture they both share.

They are also partners in sacrifice, where there are many victims from among the judges as well from among the lawyers. How many judges sacrifice their health and life in order to carry out their duties to the point that they become so ill and die as martyrs, and how many lawyers who suffer from lack of luck and are betrayed by the same people they helped to the point that they fall victims to the profession with few people knowing their real sacrifices. These are the unknown soldiers of the legal profession.

The judiciary has its own governing constitutions and traditions, the same for the legal profession and if both sides executed their duties in the proper manner then people would feel assured of their rights and the scale of justice would be balanced. The judge's main duty is to look for justice in each and every case before them and to give all his/her efforts in order to study the case and research the facts in order to reach the truth. A judge has to treat people equally in his/her chambers, so no weak person will give up on justice and no strong person will be privileged. The main virtue a judge has is to take the rights of the weak from the strong and to give the person who

has been the victim of injustice his rights and not to be affected by strong and wealthy people and not fear in his/her judgments anyone but Almighty God. The Great Prophet (May Peace Be Upon Him) said "treat the disputants equally whether in the way you look at them or speak to them and if they sat before you listen to them with the same degree on attention because this would help you in deciding the case."

In one of the addresses by Abu Bakr, he spoke of the constitutionality of Ruling and Judiciary: "the strong among you is weak until I take the right from him, and the weak among you is strong until I get him his right." According to those golden rules the judiciary shall carry out its functions and duties and achieve the great mission which is invested in it. A judge has to have many characteristics such as being quite, can control his/her temper, can patiently listen to the witnesses because all these personal features help him/her in reaching the truth among the many contradictions each dispute brings. If enthusiasm is a good feature for a practicing lawyer, being quite and moderate is what judicial work needs.

Judges and lawyers should respect each other and appreciate each others' work and duties which would enable them to perform their responsibilities with ease and cooperation. A lawyer has to show respect to the judge as such respect is not directed to the judge as a person but it is mostly directed to the idea of justice and its supreme status.

One of the most important duties the lawyer has is to adhere to good morals because the legal profession is built around good behavior and morals in addition to self confidence, independence, loyalty and defending the right.

The lawyer has to be implanted with the love of the legal profession and his/her appreciation to such a profession and the adherence to its right traditions which uplifts its status and the status of whomever is practicing it.

Lawyers must also respect each other and treat each other gracefully and this is applicable to seasoned well known lawyers as well new young lawyers as they are equal in terms of good relations, and brotherhood.

Below is a great description of the relationship that ties the Judiciary with the legal profession written by the great lawyer Abdul Rahman Al Rafe'e, the former head of the Egyptian Bar Association. This description was written by him when he introduced a book which has the same title as this article and it is considered one of the best books ever written in relation to this subject. The book was published in Italy in 1936 and was translated into Arabic in 1957 by Attorney Hassan Al Arosi. The book is almost a picture

drawn by words. The author of the book is the great Italian jurist Biro Clamandri, who had many talents and mastered many sciences, he was a university professor, a lawyer, a university president, musician and a painter. He noted that the first duty of a lawyer is to believe in the Judiciary. He also wrote about conduct during hearing sessions, the similarities and differences between judges and lawyers, judicial litigations, the problems faced by judges and lawyers and their sacrifices in the book's last chapter the author writes about the same destiny judges and lawyers face, where he imagines a lawyer and a judge who had worked for many years meeting and softly blaming each other after they both retired it was the first time they find each other side by side and not face to face and they found that they are tied to the same goal and have the same destiny and the same philosophy of life.

The lawyer starts by summarizing his situation and says "this is our life my brother judge, this is our destiny which I will never change even if I was given all the earth's treasures and money and even if my life was to start from now.

The judge answers him by saying "I don't think that there is a better job which establishes the peace

between people than the judge's job. He has medicine for every human wound which is called justice and this alone can fill my life with joy and happiness. I spent most of my short human life providing happiness and justice to the thirsty souls that were striving for it and I also participated in building the basis of peace and believe in right and good in the people's souls.

If the relations between judges and lawyers were similar, where they act like members of the same family, it is for our good both lawyers and judges to do our best in order to establish justice and protect the rights and to reinforce this relationship that connect us together and which would help in institutionalizing rule of law in our beloved Palestine and to uplift our Judiciary. It is worth noting that our laws confirmed the relationship between the judiciary and the legal profession where both the Judicial Authority Law and the Law Regulating the Legal Profession both state that the lawyers are the assistants or the Judiciary and the private practice of law is a free profession which helps the judiciary in establishing justice and guarantees the persons' right of defense.

Conciliation Court Judges Conclude Training Program on Human Rights in Amman

Fifteen Conciliation Court judges from the West Bank concluded a training program held in the Jordanian capital Amman. The program took place for three days October 30 – November 1, titled "the Role of the Judiciary in Protecting and Enhancing Human Rights." The training program was held in cooperation between the Judicial Education Department at the Palestinian Supreme Judicial Council and the Jordanian Judicial Institute, supported by the UN High Commissioner's Office for Human Rights.

The first day of the training program was conducted by Dr. Ali Abu Hajeileh, Jordanian Cassation Court Judge; Ms. Taghred Jaber, Director of Projects at the International Organization for Criminal Reform; and Ms. Iva Tomitch, Head of the UN High Commissioner's Office for Human Rights. The first day focused on the general aspects of human rights and the right to fair legal proceedings, the rights of detainees in addition to discussing the death penalty status in the Palestinian Territories.

During the second day the training program focused on the legal status of juveniles, where Dr. Abdul Rahman Tawfiq, a Criminal Law expert and former Cassation Court judge presented a working paper which focused on "the criminal system applicable to juveniles and alternative measures" and another paper titled "Legal and Social Care for Juveniles." Judge Mustafa Assaf the Head of the Judicial Inspection Unit at the Jordanian Ministry of Justice presented a working paper on the role of the judiciary in inspecting prisons and detention centers. Attorney Zuhair Al Majali, a human rights expert discussed children's rights during armed conflict. During the final day, Mr. Majid Arosi, Head of the Media and Public Relations Department at the Palestinian Supreme Judicial Council presented a working paper which dealt with the relationship of the Judiciary with the civil society organizations and its role in promoting judicial independence. Researcher Basmah Abu Sway presented a paper on violence against women. The training program was concluded by a paper presented by Hussein Abu Hannoud, a criminal justice expert at the Justice Sector Assistance Program in the Occupied Palestinian Territories titled "The Role of Judges in Combating Honor Crimes."

This training program came as one of a series of programs which are organized by the Education Department which targets different Judiciary related issues.

Do the Judges Make the Law?



By Ahmed Al Sweity

A question usually directed to legal professionals, which appears simple, but in fact the issue is more complicated than it appears. The complicity of the question does not stem only from the deferent meanings the word "law" has but also due to the various theories related to the law and its relation with other humanities such as philosophy and logic which can be used in order to answer the above stated question.

The separation between the Judiciary and other constitutional authorities aims at protecting the Judiciary's independence. The absolute separation between the Judiciary and the Legislative Authorities is one of the main guarantors of judicial independence, which protects the Judiciary from what could affect its integrity. Such a separation could lead us to believe that the Judiciary has no legislative role and is only limited to identifying the applicable law and explain any ambiguity that might surround its provisions in order to apply it on the facts before the court in light of the spirit of justice. This interpretation is in accordance with the traditional understanding of the Judiciary's role which stresses that the judges have no authority to enact any laws. But the problem that the judges face is that no law is complete despite the efforts carried out when the law is drafted until it comes into force legal provisions could suffer from ambiguity, due to the fact that legal rules are drafted in abstract terms and thus judicial interpretations of legal provisions could in many events decide what the intent of the legislator was when the law was enacted. Only when applying the law might the Judiciary realize that some areas were not properly covered by the legal rules and some issues were not anticipated by the legal provisions. In such instances the Judiciary finds itself compelled to practice what is called a flexible interpretation of the law in order to avoid certain clear injustices and absence of justice. All this requires that the courts under the spirit of justice produce rules

that would fill the gap that some laws have and clear the meaning of these laws.

The legal and philosophical question which emerges is "is the making of the law by the courts a desirable thing and compatible with the authorities and powers the courts have?" The jurists who believe in the traditional principle argue that the role of the courts is to apply the law not to create it. They go further in this line of reasoning by saying that there is a legal rule stated in the applicable law which states that "the judgment issued by the court is only an application of the legal provisions on the fact of the case and the only rule the court should play is to reveal the true meaning of the rule which was applied.

We see that this traditional view should be subject to more investigation and it is not immune from criticism. We should reconsider the contradiction between the "creation of the legal rule" and the "application of the legal rule" by the competent court adding to this, that all the legal actions taken by the court are a mere application of a supreme rule and at the same time it creates rules with the exception of constitutional rules. The evidence for such reasoning is that even if the judgment issued by the court is a mere mechanical application of the legal rule, such judgment by itself creates a new rule as it

is an order and orders are a creation of legal rule which applies to the law. We can say here that the court's judgment is not only a mechanical application of the legal rule because such application always leaves a margin for the judge's discretionary power. Such discretionary power can be practiced by both criminal and civil judges. The criminal judge can always chose to apply the minimum penalty or the maximum or to choose a penalty that is between these two levels. The same is applicable to the civil judge when estimating the compensation requested in civil cases.

Articulated judgments issued by the courts which follow a hierarchal system always play a great role in the development of the law. The judges in executing their duties are similar to the rest of the society members, where they cannot separate themselves from their society's set of values. The effect of such norms and values cannot be marginalized by any level of required integrity. In order to prove our point of view, look at how most of the legal fields in the industrial nations managed to be combatable with the new developments which are fast and rapid. The need for flexible interpretation of the law became one of the main features of any developed society.

Therefore and as a result of what has been stated above,

even in legal systems that do not allow courts to create any legal rule, they have to use the flexible interpretation of the legal rule every time they want to establish justice. For example in relation to the civil liability rules in France which its legal system does not allow the courts to create legal rules we find that only a small number of legal rules governing such important issue and most of the rules that govern the civil liability are explanatory rules made by the courts. A specific example of this rule which was adopted since 1936 by the French courts states that medical responsibility is not a contractual one but rather a tort. This is an example that shows that the judges not only create general rules but they also create individual rules.

Necessity compiles taking this approach, where the judge according to the law has to reason his/her decisions so it will not be nullified by the higher reviewing court. By doing this there is no other way for the judge but to use a general legal rule which allows him/her to largely interpret the law and if he/she could not find a law which applies to the facts of the case before them, then they have to apply an unwritten principle which he/she has to create or to find a number of laws where he/she can apply to the fact in hand and by this he/she would create a new legal rule that the judges

after him/her can use and apply. Furthermore if the legislator does not amend or nullify the legal rule which was created by the courts, this means that they implicitly agree to its existence and application.

We should point out that the legal rules created by the judges can in principle only apply to a special judgment, then how can it have a general effect? In all Anglo- Saxon legal systems there is a rule which obliges the judge to apply the previous judgments of the courts on similar cases which are presented before it. The existence of such a rule means that there is an agreement that the judges can create the law in such countries. Such rules would be impossible to exist in the civil law tradition countries such as in Palestine. But we still can argue that the generalization of the legal rules created by judges is a practiced matter due to the hierarchal organization of the courts. When the Supreme Court adopts a certain rule which is applicable to a certain legal mater, all the other courts cannot avoid the application of such a rule because not applying it will make their judgments susceptible to nullification by the higher courts. We can conclude by saying that if it is acceptable to apply the legal rule created by Supreme Court judges then logic leads us to say that the judge can make a legal rule.

Supreme Court Judges Participate in the Union of Courts and Constitutional Councils Conference in Libya

A judicial delegation participated in the Union of Courts and Constitutional Councils Conference held in the Libyan capital Tripoli. The delegation included Judge Sami Sarsour, Deputy Chief Justice, and Judge Emad Salim, Supreme Court judge. The Palestinian delegation participated in its capacity as a main member in the union while fourteen other delegations from other Arab countries also attended the conference.

The Palestinian delegation presented a research paper to the Union's Academic Committee, one of many research papers presented by the participating countries. The Palestinian research paper was prepared by Judge Daoud Derawy, Ramallah First Instance Court judge. The research paper addressed economic and political rights from a constitutional perspective. It was also agreed to hold another conference in Cairo next May.

The Conference recommended the appointment of a representative



A photo for all participating groups in the conference.

from the Palestinian Constitutional Court as a member to the Venice Committee, which is a committee that represents the constitutional courts in European countries. Judge Sarsour stated that a judge will be selected and technically qualified in order to participate in deriving legal principles, decisions, and judgments and also to prepare legal research papers. A recommendation was prepared which suggests the preparation of the "Independ-

ence of the Constitutional Judiciary and the Separation of Power Principle." The research paper will be submitted by the participating delegations to the Union's Academic Committee within the stated period. The researchers will be given a monetary prize in addition to a certificate of recognition by the Union.

During the Conference Judge Mohamad Abdul Qader Abdulah was elected as the Secretary

General of the Arab Union for Courts and Constitutional Councils in addition to Dr. Tariq Farouq Sultan as the President of the Union. Both are from the Arab Republic of Egypt.

The Palestinian delegation visited the Palestinian embassy in Libya, where they commended the reception they received by the embassy and the host country.

The Crime of Money Laundering in the Palestinian Legislation

Money laundering or what is known sometimes by money whitening is an operation of giving legitimacy to amounts of money that have resulted from illegal and criminal activities or according to certain jurists "transforming dirty money to clean money."

Money laundering operations gained a lot of attention in recent years, which make it a phenomenon that requires a lot of attention not only by legal professionals and those who combat crime and in law enforcement agencies but also by politicians and economists. Money laundering causes many negative economic, political, security and social results. Below are some of these negative effects and results of money laundering:

Money laundering operations affect all components of the national economy, especially if such operations are accompanied with the existence of a hidden parallel economy which is based on illegal activities.

Economic unrest due to the fast transfer and movement of money, especially within the globalization policy.

The unjust redistribution of wealth.

The spread of certain types of crimes such as bribery, embezzlement, and fraud in addition to corrupting many public officials.

Jeopardizing the transparency in local, Arab, and international money markets.

Obstructing the execution of public financial policies through tax evasion in addition to its negative effect on the state's budget.

The huge cost associated with combating money laundering and cleansing its effects.

It is a proven fact that there is a close link between money laundering and political instability on the international level. It was also proven that there is a close link between political and economic corruption and money laundering in addition to the establishment of false companies in order to perform intelligence activities and finally it results in the misuse of economic, social, and political powers.

Due to the dangers such crime pose, the Palestinian legislature did well by issuing the Anti-Money Laundering Law Number 9 of 2007, as such crime results in many flaws in key society institutions. Criminal organization which gain huge amounts of money due to the money laundering operations it carries out, try to penetrate the decisions making posts by suing for fraud or bribery. Sometime the heads of such criminal organizations manage to occupy very high ranking official posts or they succeed in penetrating such posts by exerting their control over the persons who occupy them or own or have control over media agencies.

Criminals who commit money laundering always seek refuge behind the privacy and secrecy of bank transactions so that they can transfer funds from one account to another and from one bank to another, and from one country to another while not being exposed to public authorities. All these actions make it very hard not to put certain limitations on the secrecy of bank accounts.

In addition to what has been stated above, money laundering is usually carried out through the use of modern legal and financial ideas due to developments in the banking and legal fields. Criminal organizations that practice money laundering usually do so by the use of shareholding companies in order to cover their real activities and any tracks these activities might leave behind.

It also refers to the use of modern electronic technologies in order to quickly transfer funds, which makes it a necessity

to impose certain limitations on the use of such technologies, which contradict the public interest and encourages its use in order to achieve the goals which lay behind inventing such technologies.

There are many examples for simple money laundering activities such as:

The use of gambling in order to produce unreal profits, or investing dirty money in certain types of trade which requires the use of cash money such as carpet trading or money exchange businesses. A practical example illustrating a money laundering activity can be found when an investor invests in a certain sector such as construction which starts by declaring a capital which is much more less than the actual capital and after a few years he/she claims that the real capital are profits which resulted from the investment while the truth is that the real capital he/she used when starting the investment. Money laundering could also be done by creating a legal dispute between two companies which belong to the same criminal organization one of them is located in a country that does not impose any limitations or restrictions on the source of money amounts (country B) and the second company is located in a country that has very strict legal and financial system which makes it hard to bring dirty money to the country (country A). The operation starts by a claim of damages made by the company in country A, which would then be referred

By Judge Abd El-Qader Jaradeh
Gaza First Instance Court

to arbitration. The company in country A will win the arbitration and then the money will be moved from country B to country A without any suspensions and after being cleared by a semi-judicial process.

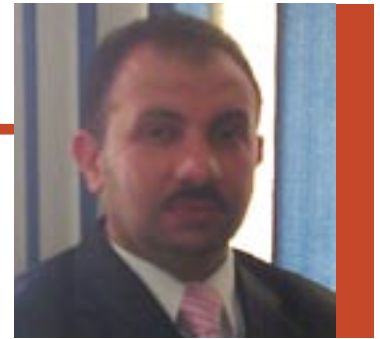
All these operations make money laundering a crime that is hard to detect or face by the traditional crime combating methods which are used to combat regular crimes. According to the Palestinian Anti-Money Laundering Law a person is considered committing a money laundering crime when he/she commits one of the following actions:

The wiring or transfer of any amount of money by any person who knows that this money is the proceeds of a crime and he/she is doing so in order to conceal or disguise the illegal origin of the money or he/she did so in order to aid a person who committed a crime to escape the legal consequences of their actions.

Hiding or disguising the true nature or origin or location or ownership or the related rights of the money by any person who knows that this money is from the proceeds of a crime.

The ownership or possession or use by any person of an amount of money he/she knows when it was received that it is the proceeds of a crime.

Participating or aiding or inciting or con-



spiring or giving advice or facilitating or hiding or attempting to commit the crime.

The Palestinian legislator considers as illegal money or subject of the money laundering crime funds that result from one of the following crimes:

Participating in an organized criminal group or an organized group which practices fraud. Human trafficking and the smuggling of immigrants. The sexual abuse of women and children. The illegal trading of narcotics and controlled substances. The illegal trading of arms and ammunition. The illegal trading of stolen goods. Bribery and embezzlement. Fraud. Banknote counterfeiting and the forging of official documents. 10. Intellectual property violations and counterfeiting. 11. Crimes committed in violation of the Environmental Protection Law. 12. Murder and aggravated assault. 13. Kidnapping, forced detention, and the taking of hostages. 14. Theft and robbery. 15. Smuggling. 16. Extortion, threat, and intimidation. 17. Counterfeiting. 18. All types of piracy. 19. Manipulation of financial markets. 20. Illegal gains.

During a Meeting between the Chief Justice and the Minister of Interior

An Agreement to Connect the Courts with the Ministry of Interior's Database to Enable the Courts to Access Citizens' Data

In response to a request made by His Excellency Judge Farid Al Jallad, the Head of the Supreme Court, Head of the Supreme Judicial Council, His Excellency Dr. Saa'ed Abu Ali, the Minister of Interior agreed to connect the courts with the Ministry's database to enable the courts to obtain needed information related to citizens. He stated that the Ministry's General Directorate of Computers will contact the Judicial Authority's Information Technology Department to achieve such connectivity. This approval came in response to a request made by His Excellency the Chief Justice who renewed a written request that was previously sent to the Minister of Interior by the former Chief Justice on September, 16 2009.

The Minister of Interior responded to this request during a meeting with the Chief Justice at the Council's offices, where both discussed issues of joint concern such as the judicial police, the enforcement of the court judgments and prison conditions.

Both parties agreed during the meeting to the importance of allocating judicial police members who are ready to assume their duties throughout the various courts regardless of their number, and not to wait until all the needed members are available, as there is no contradiction between distributing the available members throughout the courts while adding more members on an on-going basis especially since members of the judicial police are trained and able to deal with the judges and execution of their orders.



The Chief Justice in meeting with the Minister of the Interior.

The two parties also discussed the issue of traffic violations where the Chief Justice expressed his desire to expedite the process of paying traffic fines through banks or post offices for violators that are not required to appear before the court as the streamlining of such a process (paying fines in the banks or post offices) would greatly reduce the pressure on the courts and would also make it easier for the citizens who suffer greatly from the current mechanisms used for the collection of traffic fines. The Chief Justice said in this regard "I expect the new system will be in place soon."

The Minister of Interior was very interested in the Chief Justice's comments and remarks related to segregation between the different categories of prisoners and

detainees in rehabilitation and reform centers which has to be based on age, the seriousness of the crime, crime type in addition to other factors stated in the law. Such a move is much needed and constitutes a problem which is always reflected by the First Instance Court chief judges who routinely visit correction centers for inspection. The Minister of Interior said that the Ministry plans to build new prisons which are compatible with the legal standards expressed in the applicable laws. He also stressed the Ministry's commitment to enforce and execute all the judgments issued by the Palestinian courts pointing out that the Ministry is ready for such execution.

Challenging the Enforcement Department's Geographical Jurisdiction based on Debtors Place of Residence



By Mu'nes Abu Zeneh
Jenin Civil Judgment Department

Challenging the geographical jurisdiction of the Enforcement Department is considered a challenge where the concerned party requests the court to stop hearing the case before it, because it lacks the needed jurisdiction (1). Our Enforcement Law does not deal with the issue of the debtor's Enforcement Department jurisdiction (if the Enforcement Department where the debtor resides has jurisdiction in order to enforce the judgment or not), this lack of clarity was dealt with by the old Enforcement Law and its attachment which were both nullified and seized to be implemented as a result of the enactment of the new current applicable law. Although the old law used to differentiate between two scenarios, the first one is when the enforcement request is related to a judgment issued by a court or if it is related to an ordinary note or bond. In the first case the judgment can be enforced by any Enforcement Department, while in the second the bond can only be enforced in the Enforcement Department which has geographical jurisdiction over the debtor's place of residence (2).

Article (3/2) of the applicable Enforcement Law states "the procedures stated in the Civil and Commercial Procedures Law has to be followed before the enforcement judge unless the law states otherwise." By referring to the provisions of the Civil and Commercial Procedures Law, we find that the jurisdiction is given to the Enforcement Department, where the debtor's place or residence is or place of work (3).

It is an entrenched principle that challenging the geographical jurisdiction is not related to the public order, thus if the debtor did not raise such a challenge before the court starts to look into the case subject matter or before any other challenge, he/she loses his right to use such a challenge. This means that the Enforcement Department would be considered as having jurisdiction over the judgment. As a result, the enforcement judge could not rule that his/her department does not have jurisdiction without being requested to do so by the related party provided that

the above mentioned conditions are met (4).

Therefore, the attendance of the two parties to the Enforcement Department to sign a reconciliation agreement between them, is considered an implied waiver of the debtor's right to challenge the geographical jurisdiction of the Enforcement Department (5).

The applicable rules require that the debtor challenges the geographical jurisdiction of the Enforcement Department according to his/her place of residence and within the legal period for notification that is within one week of the date the debtor was notified of the judgment against him/her. If the debtor challenges the jurisdiction of the Enforcement Department in accordance to the applicable rules and within the legal period, then the enforcement judge has to refer the entire enforcement case to the competent enforcement department.

Could the debtor challenge the geographical jurisdiction of the Enforcement Department after the expiration of the notification period?

Article (30/2) of the Enforcement Law states "the notification paper orders the debtor to pay his/her debt or to object to the judgment if he/she has any legal objection, within seven days of his/her notification. The notification should make it clear that the Enforcement Department will enforce the judgment after the expiration of the seven day period without him/her paying the debt or submitting a legal objection." In addition article (34/1) of the same law states "if the debtor does not submit his/her legal objection within the legal period, the Enforcement Department shall start the enforcement procedures according to the provisions of the law." Therefore, the expiration of the period stated in the notification sent to the debtor results in the dismissal of his/her right to raise any challenges related to the debt.

Accordingly the debtor's right to challenge the geographical jurisdiction of the Enforcement Department shall be dismissed due to the dismissal of the debtor's right to challenge the debt. This is due to the fact that the expiration of the notification period means that the legal status of the debtor has been changed and he/she is now considered as a debtor who declines to pay according to Article 10/3 which states "if the debtor does not report to the Enforcement Department within the defined period, he/she should be considered as a declining debtor and the department should initiate the compulsory enforcement procedures." When the debtor takes such a position, the creditor then has the right to request from the authority to apply the legally

permitted methods for collection such as imprisonment and attachment of property. In other words the debtor is considered like if he/she implicitly agreed to give the public authority the right to decide upon the method of collection, which means that he/she concedes that it has the needed geographical jurisdiction. Due attention should be given to Article 34/2 which states "the enforcement judge has the authority to accept any challenge which is submitted before him after the expiration of the legal period if it is proven that there were compelling reasons for such a late submission." Despite the jurisprudential opinion which allows challenging the geographic jurisdiction at any stage of the case trial as long as the defendant did not speak about the case's subject matter yet, such opinion should not apply to the enforcement case because it leads to wrong results, because the right sought in the civil case is to obtain a judgment for the benefit of the applicant, while the aim of the enforcement case is to obtain certain funds from the debtor in order to fulfill his/her obligation." (6)

The defendant's place of residence rule was established in order to protect his/her rights, because the law assumes they are not in debt unless proven otherwise. But such rationale is not applicable in enforcement cases because as long as the enforcement note fulfills all the legal conditions and requirements stated in the law, we cannot doubt the debtor's debt and the expatriation of the notification legal period without paying the debt or submitting an objection indicates that the debtor has already decided his/her position in relation to paying back the debt. The evidence supporting this rationale can be found in the fact that the enforcement judge cannot issue an imprisonment order against the debtor as long as the legal notification did not yet expire. The expiration of this period is what gives the judge the power to answer the creditor's request by imprisoning the debtor.

In conclusion, we can say that the enforcement case is divided into two parts: the first is the one which takes place during the legal notification period, while the second starts after the expiration of such a period. Thus the chal-

lenge related to the geographical jurisdiction of the Enforcement Department by the debtor is an interim challenge which is linked to the notification period. The right to bring up such a challenge expires if not used during this period.

1. *Civil Procedures and Judicial Organization*, Dr. Meflih Awwad Al Qudah p. 258.
2. *Enforcement Procedures according to the Enforcement Law*, Dr. Meflih Awwad Al Qudah, p. 50.
3. *The nullified Enforcement Law Number (31) of 1952, Article (2/2)*. The nullified Enforcement Law attachment number (25) of 1965, Article (2/b)
4. *The Civil and Commercial Procedures Law Number (2) of 2001, Article (42/1)*.
5. *The Enforcement Procedures in Civil and Commercial Articles*, Dr. Ahmed Abu Al Wafa, p. 378.
6. *Cassation Court Civil Judgment (783/88) p. 2105 of 1990 and Cassation Court Judgment (105/91) p. 1860 of 1992*.
7. *Court of Appeals Judgment Number (138/2009), March 17, 2009 by Ramallah Court of Appeals*.
8. *Compulsory Enforcement Procedures*, Dr. Ahmed Al Meleji, p. 27.

The Judicial Education Department Holds a Seminar on the Scientific Evidence for Courts' Criminal Panel Judges

The Supreme Judicial Council's Judicial Education Department organized on January 18, 2010 at the City Inn Hotel in Al Birah a seminar on the scientific evidence and the legal framework for dealing with such evidence by the courts for First Instance and Conciliation court criminal panel judges. This is the first activity of a series of judicial activities that will be conducted in cooperation with EUPOL COPPS Mission. The Seminar was attended by a number of judicial and scientific experts such as Dr. Ali Abu Hajilah a Jordanian Cassation Court Judge, Mr. Michael Shlolti a police expert at the EUPOL COPPS Mission, as well as Dr. Ghassan Abu Hajleh, Dr. Rami Al Zagha and Dr. Rayan Al Ali from the Forensics Medicine Institute at Al Najah National University, in addition to Judge Ra'ed Abdul Hameed a Court of Appeals Judge and the head of the Judicial Education Department.

Opening remarks were made by Judge Ra'ed Abdul Hameed on behalf of the Chief Justice Farid Al Jallad. In his opening remarks Judge Abdul Hameed welcomed the attendees and hoped that such cooperation will continue with the EU POL COPPS Mission through many such useful joint activities, which constitute an opportunity for the



A photo of the opening of the workshop.

exchange of important and useful expertise related the Judicial affairs and the use of scientific evidence by the courts as a mean of criminal evidence.

Dr. Ali Abu Hajilah said that this subject matter is highly important for the judges and all persons who deal with scientific criminal evidences in general, and those who deal with the crime scenes specifically. He added by saying that this seminar will enable participants to know the mechanisms of assessing technical evidence obtained in the crime scene or from the perpetrator of the crime or the victim, or even from the tools and weapons used in crimes. Abu Hajilah added that the main step which has yet to be achieved is the establishment of a specialized criminal lab to deal with all types of criminal evidences in Palestine.

Judge Maria Benidetti, the judicial expert at the EUPOL COPPS Mission and an Italian Court of Appeals judge praised on behalf of herself and her colleague the Judicial System Expert Emeli Rakhurst the important role the Judicial Education Department and Judge Abdul Hameed are playing. She said that she is proud of this cooperation with the Council and hoped that it continue.

She added that the EUPOL COPPS Mission seeks to contribute to providing security to the judicial system, and that the Judiciary would continue to develop and achieve, therefore, it is necessary that all expertise join together to achieve the best benefit. She asserted that projects supporting the judiciary believe in the law and it's role.

The Legal Age in Palestine is Fifteen Years

By Fateh Hamarsheh

Any law student has to study competency and its divisions in the first semester at law school. Legal competency is one of the most important legal issues because of the important legal effects it has, as it is the standard used in order to decide legal implications for someone's actions and if such action is legally binding according to the provisions stated by the law.

It is strange that the issue of legal age is considered eighteen years, when a person reaches such an age they become fully competent, while in fact a person reaches the legal age at the age of fifteen and no one can claim he/she is not competent. It seems that most legal professionals think that the legal age is eighteen, due to their education in the neighboring countries and because our law schools teach the Jordanian civil law which is not used in our country and is not enforced.

Anyone who carefully reads "Majalat Al Ahkam" and view its provisions will find that the provisions governing the legal age are very clear and do not need much effort to be understood. These provisions if read carefully, would indicate that

this age might be less than fifteen years. In order to make things more clear, stating the provisions which dealt with this issue in this article and trying to explain it in order to clarify the issue.

1. Article (985): the legal age shall be proven by pregnancy, menstruation, occupancy."

2. Article (986): "The male legal age shall be twelve years and the female is nine years and if a male reached the age of twelve and did not reach puberty then should be called an adolescent and if a female reaches nine years old and did not reach puberty then she should be called an adolescent until they reach puberty."

3. Article (987): "whoever reaches the legal age and did not show any signs of puberty should be considered as reaching the legal age"

4. Article (988): "A young person who did not reach the legal age and claimed reaching the legal age, such claim should be disregarded."

5. Article (989): If the adolescent admits reaching the legal age and signs of puberty are not reflected in his/her appearance would negate his/her admission; his/her admission should be nullified and all his/her contracts and admissions shall be valid and if he/she claimed that

at the time of his/her admission did not reach the legal age, such a claim should not be taken seriously."

Before clarifying the above mentioned articles and provisions, we should note that the Majalat Al Ahkam which is the applicable law that governs our transactions in the country is also the law that defines competency and the legal age. Other provisions stated in other laws came in the context of such laws only and do not related to the validity of the person's actions and the contracts he/she might conclude and his/her admissions. Thus what is stated in the penal code is in terms of criminal responsibility and punishment, is only related to the application of this law and only related to the criminal responsibility according to the age of the accused.

The provisions and articles stated above, show that the legal age starts at twelve years of age for males, and nine years of age for females and not before those ages. If a male claims that he reached the legal age after the age of twelve and if a female claims such thing after the age of nine, then his/her body has to be inspected and if the inspection confirmed his/her claim of legal age then the action he/she took shall be valid. Any person who claims that he/she reached the legal age and his/her claim was accepted, cannot retract his/her claim in order to nullify the legal actions he/she took by saying that he/she did not reach the legal age at that time. At the age of fifteen both males and females are considered reaching the legal age by law and their actions are binding and have the full legal effect.

In its judgment number (19/2005) issued on the 20th of April 2005, the Cassation Court stated that "the legal age is fifteen years" this judgment also dealt with the various stages of competency which clearly defined the legal age in order to clear any suspensions about this age. The judgment dealt with the legal age and legal competency by tackling legal age issues the age for distinguishing as per the following:

1. The age of distinguishing right from wrong begins when a child is seven, if the acts of a child would absolutely benefit them then it should be considered valid without the permission of their guardian. If such acts are absolutely harmful to him/her then it should be ruled as invalid. If such acts could benefit or harm him/her then it should be valid upon the consent of his/her guardian.

2. The consent of the guardian could be explicit or implied, thus the silence of the guardian and being witness to the land sale contract is considered as permission by the guardian.

3. Sale contract are among contracts that vary between benefit and harm, and the witnessing of a guardian over a land sale contract by dis-



tinguishers who reached fifteen or eleven years of age at the time of the contract is considered a permission for them to sell it.

4. The legal age is fifteen years.

The above stated judgment is completely in agreement with the provisions and articles of the Majalah specifically with article (967) which deals with the age of distinguishing and the actions of the distinguishing minor.

Despite the fact that the Palestinian legislator did not deal with competency in the Civil and Commercial Procedures Law of 2001, the legislator stated in Article 79 of the law that both parties have to be legally competent (this legal competency is defined by the Majalah). We find that our legislators tend to consider a person legally competent by the age of eighteen. Such a tendency is stated in Article 13 of the same law which states "The person to be notified has to be notified in person or at his/her original or chosen domicile or at his/her place of work or to his/her representative, if this was not possible according to the before mentioned methods, then the notification should be served to any of his/her family members who lives with him/her and appears to be 18 years of age or older." Since this provision only deals with the notification of judicial papers, it should not be considered as an amendment to the provisions governing the legal age stated in the Majalah. Article 13 should be looked at as a contradiction which requires the interference of the legislator in order to clarify this contradiction.

From the above discussion we can conclude that the age of distinguishing starts at seven and the actions of the person who reached seven shall be deemed valid if it absolutely benefit him/her and it should be ruled invalid if it absolutely harmful to her/him. In addition if such actions might benefit or harm him/her then its validity hangs on the guardian's consent. If the female child reaches nine years and the male reaches twelve years, they can claim that they reached the legal age and if their bodies indicate so. In such incident their actions should be held legally valid. When a female or a male child reaches the age of fifteen all their actions should be held as legally valid and no one can claim that their competency is not complete.

Continued from page 1- The Palestinian Judiciary Scored Many Achievements but Much More is Still Ahead

Reaching understandings regarding the standing problems between justice sector partners, in order to formulate a relationship built on a clear basis, and compatible with the related legal provisions that does not contradict with the principles of judicial independence.

Strengthening the relationship with all community institutions related to the Judiciary such as law schools, civil society organizations and others, built on a clear basis which leads to enhancing the independence of the Judiciary and activating its role.

Second: Guaranteeing Fair Trials

Guaranteeing a fair trial is the main role of the Judiciary, which can be achieved by strengthening and enabling the justice institutions and administrations through achieving the following steps:

Continuing the efforts of solving case accumulation problems during the Intifada years through upgrading the case management procedures and speeding up the litigation process, by implementing the recommendations stated in the studies related to judicial backlog in addition to unifying case flow procedures in all courts which would enable the courts to exert early control over the cases. In addition to the developing the notification departments and increasing the number of acting judges and allocating the judges according to actual needs, as well as introducing specialization such as labor, traffic, and criminal cases within the court system.

Improving the capacities of judges and the administrative staff through designing special training programs and by coordinating the efforts with the Judicial Training Institute.

Strengthening judicial inspection through providing the Judicial Inspection Department with the needed human and technical resources.

Establishing a quality assurance unit in the court administration that would be responsible for quality assurance and internal control.

Third: Enabling the Judiciary in order to improve its services and efficiency according to the law.

The Council will work towards the development of the financial and administrative functions of the Judiciary through the implementation of the following steps:

Complete the implementation of the Supreme Judicial Council's organizational structure.

Activate the role of the Council's secretariat and the establishment of two units one that supports the Council's functions and follows up its decisions and the second would be responsible for judges' affairs.

Establishing a Judicial Strategic Studies Center.

Complete the courts' automation program (Mizan V2).

Provide a suitable litigation environment in places that still lack such an environment.

Fourth: Strengthening public awareness on the role and the importance of the Judiciary in achieving justice and rights, through the following:

Continue the open door policy with the media in order to promote coverage of the Judiciary and court activities.

Organize public awareness campaigns to enhance public understanding of the Judiciary.

Continue publishing all information and news related to the Judiciary through the Qadao'na newsletter and the Council's website.

Enhance the cooperation with civil society organizations based on the Memorandum of Understanding with civil society organizations.

Continue improving the public departments such as the notary public, enforcement and notification departments.

Editorial Board

Judicial Mediation

By Judge Samer Al Nammari
Ramallah Conciliation Court

There is no doubt that judicial mediation is one of the alternative dispute resolution methods used to settle civil and commercial disputes between individuals or groups in order to reach a settlement in a short time, with the least effort and cost with the consent of the disputants and with assistance of an impartial person who plays the role of a mediator.

Judicial mediation is the most common method used to settle disputes by reaching a settlement which satisfies both parties. Judicial mediation always stresses on the protection of interests of both parties, accordingly judicial mediation is voluntary and is not subject to any procedural rules rather it needs the deployment of an open dialogue between

two equals where they feel confident and free to express their views related to the dispute. The settlement decision is taken by the parties themselves without the interference of the mediator who work as a facilitator for such negotiations and dialogue.

One of the judicial mediation features is the confidentiality of procedures where parties cannot use the information related to the mediation process before any court or other body. It is also flexible due to the fact that there are no pre-stated procedures or rules, and guarantees confidentiality and the final settlement is based on a satisfactory and acceptable solution for both parties, while keeping good and friendly relations between the parties. Mediation sessions assist in overcoming obstacles, and provides creative solutions for settlement of disputes. The parties also have the right to

retract any offer they might make during the mediation sessions unless it has been documented in writing and since the settlement is based on the parties' consent the enforcement will be based also on their mutual consent which is unlike judicial judgments that have to be strictly enforced. In addition, selecting the mediator is subject to the parties consent. The mediator can meet with each party alone, where he/she can assess the legal standing of each party in the dispute, and the settlement is reached with the acceptance of both parties and is considered a binding judgment.

It is worth mentioning that the mediator's role is limited to encouraging the parties to reach a settlement for the dispute and when the mediator starts his/her mission he/she has no pre-existing ideas or convictions about the dispute, their only concern is to work hard in order to settle the dispute. The mediator's mission is not to decide what is just and fair rather to assist in defining the dispute and to overcome the differences between the parties and to explore the available options. This means that the disputants themselves refer their differences to mediation and not to the mediator. Thus the parties have to be encouraged to solve their differences by themselves but requires knowledge of mediation techniques by the mediator and to master all methods and skills which would facilitate reaching a



settlement to the disputes, he should also have the needed skills to understand each party's interests and to focus on them in order to create various options and alternatives, as well as to obtain information through simulations, and develop criteria and in depth research on all alternative solutions in order to reach a satisfactory solution to both parties without having to declare a losing party and a winning one.

Based on the above, mediation constitutes an easy and effective method of settling disputes with assistance of a third person and the referral to mediation eventually decreases the burden of referring to litigation. Statistics in neighboring countries such as Jordan show that the settlement rate in mediation cases exceeds (60%), while international statistics show that four out of five mediation cases are solved. All these facts show that mediation is an important method in settling various types of disputes and eventually without any exaggeration it will become the first method used in settling civil disputes in the world if it is used properly as an alternative method.

The Technical Office Publishes Three Books on Legal Principles of the Cassation Court

The Supreme Judicial Council's, Supreme Court Technical Office published three new books containing legal principles derived from judgments issued by the Cassation Court, which is a continuation of a publishing process handled by the Technical Office. The published books contain the legal principles issued by the Cassation Court during the period 2002-2004. The books were published under the following titles: "Legal Principles issued by the Palestinian Cassation Court (in criminal cases) during 2002, 2003 and 2004; Legal Principles issued by the Palestinian Cassation Court (in civil cases) during 2002 and 2003; and Legal Principles issued by the Palestinian Cassation Court (in civil cases) during 2004."

Judge Imad Salim, a Supreme Court Judge and the Head of the Technical Office stated that the Technical Office is exerting efforts to make all types of information available to the judges, which contributes towards uplifting the Judiciary and asserting just rules. He added that the according to the strategic plan of the Technical Office, the office will work on the issuing a periodic newsletter that contains the legal principles. The publication of this newsletter will begin in 2012 after overcoming the backlog due to the absence of publication in the previous years.

It is worth mentioning the Technical Office had previously published a book titled "Legal Principles issued by the Palestinian Supreme Justice Court during 2002, 2003 and 2004."

Judge Farid Al Jallad: Supreme Court Judges Perform Duties of the Constitution Court but the Number of Cases they Heard is Not Many

His Excellency Judge Farid Al Jallad, the Head of the Supreme Court, the Head of the Supreme Judicial Council stated that there are two different opinions regarding the establishment of a Constitutional Court. The first sees that the road is now paved to establish this court, which is totally based on theory derived by concerns related to complete the establishment of the judicial system, while the second opinion sees that it is premature to establish a Constitutional Court.

The opinion describing the establishment of the court as immature has many supporting justifications, the most important of which is that we still do not have full control and sovereignty over the our lands and sovereignty is a very important element in the realization of the rule of law. In addition, the Constitutional Court Law is based on the Basic Law which states in its preamble that it is an interim law, thus it could not be considered as an effective constitution under the current circumstances and the presence of the Israeli occupation and the internal division. Furthermore the Constitutional Court should not exist in one part of

the country only, therefore, the Judiciary has to act according to the current circumstances and we should take into consideration our Palestinian reality in addition to the country's highest national interests taking into consideration citizens' rights and interests. The Chief Justice said that experience proved that Supreme Court judges are the ones fulfilling the duties and responsibilities of the Constitutional Court and the number of cases the Supreme Court has heard in its capacity as a Constitutional Court are very few and do not exceed the number of fingers on the hand while also noting that Supreme Court judges have some expertise to preside over constitutional cases.

The views of his Excellency Judge Farid Al Jallad were expressed in a speech during the Third Justice Conference, which was organized by the Palestinian Center for the Independence of the Legal Profession and the Judiciary (Musawa), on the 13th of December 2009, which was held in cooperation with the International Commission of Jurists with support from the European Commission at the Red Crescent Society hall in Al Bireh.

A Workshop on Calculating Compensation for Road Accident Victims



The Chief Justice during the opening of the workshop.

The Supreme Judicial Council's Judicial Education Department organized on October 12, 2009 a workshop at the Grand Park Hotel in Ramallah for 40 First Instance courts judges throughout the West Bank to address calculating compensation for road accident victims as stated in the new and old Insurance Law.

The workshop was inaugurated by His Excellency Farid Al Jallad, the Head of the Supreme Court, the Head of the Supreme Judicial Council and attended by his deputy Judge Sami Sarsour. His Excellency stated that such workshops provide a forum for the exchange of ideas and expertise related to the subject matter. He added that some judicial systems tend to invest in such workshops to come out with recommendations regarding legislative amendments to the legislative authority.

Dr. Ghassan Faramand, Director of the Institute of Law at Birzeit University stated that the role of the Institute of Law is to support the judges and not to interfere in their affairs. He also congratulated Judge Al Jallad for his appointment as Chief Justice, while praising the achievements carried out under the leadership of the former Chief Justice, Judge Issa Abu Sharar, particularly in institutionalizing the Judicial Authority.

Judge Sarsour who addressed the subject matter, stated that when road accident victims are compensated, it is not considered to be compensation but rather a mitigation of the harmful effects of the accident so the family of the deceased would not have to suffer. He stated that the law offered exceptions and entitlements to file compensation cases for car accident victims.

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